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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,442	09/30/2003	Jeffrey A. Nowell	PTOZ 2 00021	5633
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Jay F. Moldovanyi, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518				
EXAMINER THISSELL, JENNIFER I				
ART UNIT 3635		PAPER NUMBER		

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,442

Applicant(s)

NOWELL ET AL.

Examiner

Jennifer I Thissell

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/30/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Regarding claim 1, the language between the preamble and certain portions of the body of the claim is inconsistent. For example, the preamble of claim 1 sets forth the subcombination "frame assembly". However, line 3 of the claim recites a bottom frame member that is positioned adjacent a raised floor structure, which sets forth a positive relationship between the frame member and the floor structure, and thus appears to claim a combination. Applicant should note that the claims that have inconsistent language are being considered as having been drawn to the subcombination, and therefore the phrase should be changed to "capable of being positioned adjacent", or similar. If it is indicated in the response that the combination is the intention, the language in the preamble must be changed to indicate a combination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 is unclear because the preamble recites assembling a frame assembly having a "screen" and a railing, however, there is no mention of the screen or how it relates to the method in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 12, 14-17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (US Pub 2004/0168379). Chen teaches a frame assembly comprising a bottom frame member 30, a pair of spaced apart side frame members 20 connected to and extending upwardly, a top frame member (between 41 and 43 in Figure 1) spaced from the bottom frame member and connected to the side frame members, a plurality of rectangular pickets 40 extending between and connected to the top and bottom frame members, an upper frame section supported by the lower section, and a screen 60 that is removably mounted to the top and bottom frame members and being located adjacent at least one picket. The frames have tracks that include bumpers 25

for engaging the screen panel. Regarding claim 17, the second pair of spaced apart side frame sections extending upwardly are the upper portions of frame section 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-8, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US Pub 2004/0168379) in view of Murdaca ('954). Chen teaches an assembly as stated above, but does not state that the picket is a tubular member. Chen does state that the frame and pickets may be made of aluminum materials [0028], which could reasonably be viewed as being hollow or tubular. Murdaca shows that it is known in the art to provide a frame assembly that is made of aluminum and has hollow profile. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a hollow frame assembly, since this utilizes the strength of aluminum, while keeping the weight of the structure at a minimum.

Chen does not show a detailed connection of the pickets as including spaced holes in the frame members where the pickets are received, and a

fastener received through holes in the picket at the ends. Murdaca shows that it is known to have a frame assembly connection that includes spaced holes 36 to receive pickets 20, whereby a fastener 19 is received through holes in the pickets. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize this type of frame and picket connection. This would eliminate the need to weld the pickets to the frame members, which would allow for readjustment or the ability to take the assembly apart. Chen does not include seam sealer between the ends of the picket and the frame members. However, it is well known in the art to provide sealant or caulking at the connection site of structural elements in order to seal the assembly from the weather and would therefore be obvious to one having ordinary skill in the art at the time the invention was made.

Claims 9-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US Pub 2004/0168379). Chen teaches an assembly as stated above, but Chen does not include a second (third in claim 13) screen panel on the other side of the frame. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a second screen, since mere duplication of elements is considered routine in the art. An addition of a second screen on the other side would decrease the likelihood of intrusion of insects.

Chen does not specifically show leaf springs in the tracks of the frame members, but does show a spline 61 that holds the screen panel in place in the track. Because the spline performs the same function of the spring, which is to hold the screen in place, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize this type of holder in the frame assembly.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green ('040). Green teaches first ends of a picket 44 into a first spaced opening on a bottom frame member (Figure 2), inserting a second end of a picket into a second aligned opening on a top frame member 32, attaching a first side member 36 to the bottom frame and top frame adjacent a first picket, and attaching a second side frame section 38 to the bottom frame member. A screen is installed on one side of the picket between first and second side frame sections.

Green does not show a plurality of pickets or a second screen panel on the other side of the picket. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add additional pickets and a second screen, since mere duplication of an element is considered routine in the art. Additional pickets would increase the stability of the frame, and an addition of a second screen on the other side decrease the likelihood of intrusion of insects.

Claims 23, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Gelais et al. (Des. 402,376). St. Gelais shows a plurality of pickets inserted into spaced openings on a bottom and top frame member, a first and second side frame section attached to bottom and top frame members, a second bottom frame member connected to the top frame member, a third and fourth frame members attached to top frame members, and screen installed between first and second frame sections above and below the second bottom frame member. Although St. Gelais does not recite the method steps of connecting, installing, inserting, and attaching, it would have been considered obvious to one having ordinary skill in the art at the time the invention was made to perform these steps in order to assemble the shown frame assembly.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer I Thissell whose telephone number is (703) 306-5750. The examiner can normally be reached on Mondays and Tuesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naoko Slack
Primary Examiner